

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Regulatory Review –)	CC Docket No. 98-171
Streamlined Contributor Reporting)	
Requirements Associated with Administration)	
of Telecommunications Relay Service, North)	
American Numbering Plan, Local Number)	
Portability, and Universal Service Support)	
Mechanisms)	
)	
Telecommunications Services for Individuals)	CC Docket No. 90-571
with Hearing and Speech Disabilities, and the)	
Americans with Disabilities Act of 1990)	
)	
Administration of the North American)	CC Docket No. 92-237
Numbering Plan and North American)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution)	
Factor and Fund Size)	
)	
Number Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170

COMMENTS OF TELETOUCH COMMUNICATIONS, INC.

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SUMMARY

Teletouch believes that the Commission should not adopt a connection-based methodology and accordingly should not assess a flat-fee of any amount on the paging industry. The paging industry is characterized by low profit margins, declining subscribership, and bankruptcies. A more than three-fold increase in USF contribution per subscriber will succeed in driving more paging customers away from low-cost communications service and add to the decline of the paging industry.

Second, Teletouch believes that the assessment of a flat-fee would violate the Commission's statutory obligations that form the foundation of the universal service system. Unlike the current interstate revenue-based assessment methodology, a flat-fee assessment does not take into account vast per-line revenue disparities among the different types of wireless carriers, and differences in network usage for different types of carriers or services, or even such disparities within one industry. Moreover, a flat-fee involves inappropriate contribution shifting. A flat-fee assessment on the paging industry is inequitable and discriminatory, and therefore appears to specifically violate both the letter and the spirit of both Section 254(b)(4) and Section 254(d) of the Communications Act.

Third, Teletouch urges the Commission to retain and lower the interim safe harbor and to also retain the *de minimis* exemption. These contribution factors prevent economic waste and lower administrative costs for the paging industry and for USAC.

Fourth, the Commission should define "connection" to exclude one-way paging and should not require additional reporting requirements.

Finally, the Commission should recognize that the proposed flat-fee assessment would unduly benefit the interexchange industry by inappropriately shifting their contribution burden to the fragile paging industry. USF reform should not be at the expense of the paging industry.

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COMMENTS OF TELET TOUCH COMMUNICATIONS, INC.

Teletouch Communications, Inc., (“Teletouch”), by its attorneys and pursuant to Section 1.415 of the Commission’s Rules,¹ hereby submits its comments in response to the Commission’s *Further Notice of Proposed Rulemaking and Report and Order*, FCC 02-43 (“*FNPRM*”), released February 26, 2002, in the above captioned proceeding. Teletouch is a

¹ 47 C.F.R. § 1.415.

regional provider of paging and messaging services to approximately 300,000 customers (including numerous hospitals, physicians, police and fire departments, emergency medical service providers, small businesses such as delivery services and construction contractors, and individuals who use paging as an inexpensive method for keeping in contact with family members) in rural areas and second tier markets in the states of Alabama, Arkansas, Florida, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee and Texas. The Commission's proposed per-pager assessment of \$0.25 per month would greatly and negatively impact Teletouch in this proceeding.

I. INTRODUCTION

Teletouch supports the Commission in its efforts to streamline and reform the current method for assessing contributions to the federal universal service fund and recovering contribution costs from end users. Teletouch also believes that is a good idea to seek to expand the contribution base to help ensure stability of the universal service fund and is not opposed to basing contributions to universal service on interstate revenues. However, Teletouch vigorously opposes the adoption of any connection-based methodology (per-pager assessment) for paging carriers.

II. THE COMMISSION SHOULD NOT ASSESS PAGING UNIVERSAL SERVICE CONTRIBUTIONS ON A FLAT-FEE BASIS

The Commission should not assess providers of paging services a flat fee for contributions to universal service. Indeed, the Commission has recognized that paging service has unique characteristics, which is based on the limited functionality of one-way paging receivers that only provide customers with access to one-way communications.² As a result, the Commission has requested comment on whether a \$0.25 per-pager assessment would be

² *FNPRM* at 39.

appropriate and what impact such an assessment would have on the marketplace and the paging industry.³

A. Declining Paging Industry

Over the past five years, the paging industry has dramatically declined from a highly competitive, robust industry in early 1996 to an industry that is characterized by low profitability, declining subscriber bases and intense competition from other commercial mobile radio services including digital cellular, 800 MHz SMR cellular like services and Broadband Personal Communications Services. As a result, major paging companies, including, MobileMedia Corp., TSR Wireless L.L.C.,⁴ Arch Wireless⁵ and WebLink Wireless Inc. (for which Teletouch provides two-way paging on a resale basis) have declared bankruptcy. And just recently, Metrocall, the second largest independent paging company in the United States announced that would file for bankruptcy protection by the end of April, citing the downturn in the paging sector.⁶

As the Commission is aware, based on figures compiled in 2001, between 1998 and 2000, the percentage change in growth of paging/messaging units drastically decreased from 4.4 percent to -1.1 percent and the average monthly revenue per unit decreased as well.⁷

³ *Id.*

⁴ Mike Dano, *Study of Paging History May Show Future Wireless Do's and Don'ts*, RCR Wireless, June 4, 2001, at 6. TSR Wireless has since been liquidated.

⁵ Ricardo Roberts, *Arch Could Audaciously Be Seeking Deals Sinking Paging Co. Misses Coupon, but Could Still Be Ready to Bid for Metrocall*, Mergers and Acquisitions Report, July 23, 2001. Arch, after acquiring PageNet which had also filed for Chapter 11 controls about 40% of the U.S. paging market.

⁶ *See Communications Daily*, 22, 73 (April 16, 2002).

⁷ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Sixth Report, 16 FCC Rcd 13350 at Table 5 (2001).

Accordingly, paging companies face a high elasticity of demand and realistically cannot increase charges to their subscribers, by even \$0.25 per pager unit per month, without fear of losing more customers. Today, the demand for paging service is very price-sensitive and assessing a flat fee which is, on average, more than three times the current universal service assessment would only serve to depress the paging industry even more.

Moreover, despite the fact that some of the larger paging carriers have attempted to roll out advanced messaging services (e.g., mobile e-mail, text messaging, and Internet access), one-way paging still accounts for almost all of a paging carrier's service based revenues.⁸ Factors such as high equipment costs, highly competitive pricing, pressure from broadband wireless services and difficulties in obtaining new financing have prevented many paging carriers from expanding into two-way messaging.⁹

B. The Commission's Proposal to Assess USF Contributions on a Flat-Fee/Per Connection Basis is Contrary to Law.

The Commission's proposal to assess universal service contributions on a flat-fee/per connection basis would violate the Commission's statutory obligations that form the foundation of the universal service system. Specifically, Section 254(b)(4) of the Communications Act of 1934, as amended (the Act) requires "all providers of telecommunications services [to] make an equitable and nondiscriminatory contribution" to universal service. Further, Section 254(d) of the Act requires "[e]very telecommunications carrier that provides interstate telecommunications services to contribute, on an equitable and nondiscriminatory basis" to universal service. This means that any recovery mechanism that the Commission adopts must "measure the amount of

⁸ For example, one-way messaging appears to account for about 90% of Arch's revenues. See *supra* note 7.

⁹ Even large paging operators have been unable to rapidly expand into two-way messaging.

interstate telecommunications services provided by each carrier,”¹⁰ and not violate the “equitable and nondiscriminatory” tenets of Sections 254(b)(4) and Section 254(d) of the Act. The Commission has previously found that the current revenue-based assessment methodology to be equitable, non-discriminatory, competitively neutral, and relatively easy to administer.¹¹

In its 2000 CMRS Competition Report, the Commission found that in 1999, mobile telephony providers generated about \$41 per month per subscriber while all paging carriers generated only about \$8 per month per subscriber.¹² Because paging carriers would be paying a disparately higher proportion of their revenue towards USF than other CMRS mobile telephony carriers, a flat-fee assessment on the paging industry would be inequitable and discriminatory, and would therefore violate both the letter and the spirit of both Sections 254(b)(4) and 254(d) of the Act. And, unlike the current interstate revenue-based assessment methodology, a flat-fee assessment does not take into account vast disparities among the revenues generated per line, and network usage for different types of carriers or services, or even such disparities within one industry.

Moreover, a revenue-based system can more accurately approximate both network useage¹³ as well as identify the local service nature of the smaller regional paging carriers. Indeed, the inequity is exacerbated when low-volume and low-income paging customers are

¹⁰ *NPRM* at para. 17. *See also*, 47 USC 254(d).

¹¹ *Federal-State Joint Board on Universal Service*, Report and Order 12 FCC Rcd 8776, 9206-09 (1997).

¹² *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Fifth Report, 15 FCC Rcd 17660 at 17746 (2000) (“2000 CMRS Competition Report”).

¹³ Two-way paging uses more network resources than one-way, and accordingly, is priced higher than one-way.

required to pay a disproportionate universal service contribution.¹⁴ Given the disparities such as these, it would be inequitable to assess universal service fund contributions based on methodologies other than revenues, which more closely approximates network usage and customer utility from use of the network.

Second, Teletouch notes that the \$0.25 per-pager assessment was initially proposed by the “USF Coalition”¹⁵ It is likely that none of the USF Coalition members considered the unique nature and impact of a per-pager fee on the paging industry, especially for one-way paging service providers. Instead, the interexchange carriers’ proposal appears to be self-serving by maximizing their profits through a dramatic reduction of their USF contributions and a simultaneous increase in the paging industry’s contribution. Specifically, under the fee-based mechanism, the overall mobile wireless provider USF contribution would increase from 14 percent to 24 percent whereas the overall interexchange carrier contribution would decrease from 63 percent to about 56 percent, or lower, depending on how a “connection” is defined. Moreover, whereas the mobile wireless industry would face roughly a two-fold increase¹⁶ (from \$0.46 to \$1.00 per unit), the proposed per-connection \$0.25 flat fee for paging carriers would disproportionately impose, on average, more than a three-fold increase¹⁷ (from \$0.07 to \$0.25 per unit).

Teletouch’s experience indicates that paging subscribers are very price conscious, and that customers could be driven away from the paging industry if the Commission adopted a per-

¹⁴ See *FNPRM* at para. 49.

¹⁵ *FNPRM* note 90, a group of self-interested rational wealth maximizers (the e-commerce Telecommunications Users Group, AT&T and WorldCom).

¹⁶ *FNPRM* at para. 59. The Commission staff indicated that mobile wireless providers (excluding paging providers) currently contribute approximately \$0.46 per connection. *Id.*

pager fee of \$0.25. In order to avoid a degradation in service to their subscribers, the only alternative for paging carriers may be to absorb the USF assessment, which could prove to be financially fatal in an industry that exists on very slim profit margins. The burden of universal service fund contributions should not be shifted onto paging carriers with disproportionately lower revenues per subscriber, especially when the paging industry is in a well-documented decline.

Third, any per-pager assessment would be arbitrary and violate the tenets of sections 254(b)(4) and 254(d) of the Act because a flat-fee does not recognize differences between nationwide paging and other CMRS carriers, on the one hand, and the local nature of regional service providers on the other; and is therefore completely disassociated with the jurisdictional nature of the local paging service. Teletouch's end-user revenues are almost exclusively intrastate and local in nature because, for the most part, it provides basic one-way paging service to rural and second tier markets. Nationwide paging carriers and other CMRS providers (e.g., cellular, 800 MHz Digital SMR and broadband PCS) are more generally interstate in nature, due both to the geographic areas they serve; as well as their offerings of two-way services. Thus, because a flat-fee assessment is disassociated with the jurisdictional nature of various CMRS providers, a "one-size-fits-all" mechanism would be grossly unfair for regional and other small one-way paging carriers, and thus contrary to the mandate of Sections 254(b)(4) and 254(d) of the Act. Accordingly, the Commission should retain a contribution mechanism that is based upon interstate revenues rather than on a flat-fee per pager or connection basis.¹⁸

¹⁷ *Id.* The Commission staff indicated that pager providers currently contribute approximately \$0.07 per pager.

¹⁸ See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d, 448 (5th Cir. 1999).

C. Inappropriate Shifting

Flat-fee assessments will necessarily involve a paging industry averaging process that is an inadequate substitute for actual revenues. This is so because low volume paging customers will end up subsidizing high volume customers, since both sets of customers would be assessed the same universal service contribution. Flat-fee assessments, as shown above, also unfairly shift more than an equitable share of carrier contributions to those consumers who receive virtually all intrastate local pages. A carrier that adopts policies that shift a disproportionate share of the cost of contributions onto certain customer classes would violate the “just and unreasonable” component of Section 201(b) of the Act¹⁹ and the “unreasonable discrimination in charges” component of Section 202(a) of the Act.²⁰ Forcing a paging carrier to do so by requiring the carrier to collect a flat-fee assessment unrelated to a customer’s interstate telecommunications only substitutes one wrong act for another.

D. Gradualism

The Commission should recognize the importance of the principle of gradualism as it has in the past. For example, Feature Group A and B discounts were provided primarily to foster the continued development of interexchange competition.²¹ The Commission also created the enhanced service provider (“ESP”) exemption from access charges,²² recognizing that the ESP industry needed stability in a time of rapid change; that “any alternative...should minimize disruptive effects on ESPs;” and that the exemption provided substantial benefits to ESPs while

¹⁹ 47 U.S.C. § 201(b).

²⁰ 47 U.S.C. § 202(a).

²¹ See *Access Charge Reconsideration*, 97 FCC 2d at 728; *Access Charge Second Reconsideration Order*, 97 FCC 2d at 861; *Third Reconsideration Order*, 101 FCC 2d at 1229.

²² See *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631 (1988)

not imposing new burdens on other ratepayers.²³ Teletouch believes that these principles should guide the Commission's decision to not adopt a per-pager assessment fee. The paging industry now requires stability, as demonstrated by the recent number of bankruptcies and the impending bankruptcy of MetroCall. Moreover, retaining the current revenue-based assessment will not burden other ratepayers, and no new evidence indicates otherwise.

III. THE COMMISSION SHOULD RETAIN AND LOWER THE INTERIM SAFE HARBOR FOR CALCULATING THE PERCENTAGE OF PAGING CARRIERS' INTERSTATE REVENUES

No matter which assessment methodology the Commission ultimately adopts, it should retain and reduce the safe harbor provision²⁴ for calculating the percentage of paging carriers' interstate revenues. The Commission adopted the 12 percent safe harbor in 1998 based on the average percentage of interstate paging revenues reported by paging providers for 1997.²⁵ However, as this comment demonstrates, the paging industry has dramatically contracted since 1997, and the proposed flat-fee assessment does not recognize the fact that small, mid-sized, and regional paging carriers carry very little interstate traffic, and therefore, derive virtually the vast majority of their end user revenues from intrastate communications. As the Commission stated in the *Safe Harbor Order*, the "percentage of interstate telecommunication revenues derived from the provision of paging services may vary according to the amount of local service versus nationwide service that a paging carrier provides."²⁶ And under the current revenue based

²³ Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture 4 FCC Rcd 3983 (paras. 27-32) (rel. May 9, 1989).

²⁴ See *Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21259-60 para. 14. ("*Safe Harbor Order*").

²⁵ *Id.*

²⁶ *Safe Harbor Order* at para. 14.

system, a paging carrier is permitted to report less than 12 percent of its revenues as interstate.²⁷ Simply put, a flat-fee based assessment, which assumes that all pagers are used to receive interstate calls, is not only inconsistent with the intrastate nature of local paging service, but without a reduced safe harbor, only exacerbates the matter.

IV. THE COMMISSION SHOULD RETAIN THE *DE MINIMIS* EXEMPTION

In the *FNPRM*, the Commission seeks comment on whether a *de minimis* exemption should be created if a per-connection mechanism is adopted.²⁸ Teletouch believes that the Commission should retain the existing *de minimis* exemption if the revenue-based assessment is retained for paging carriers and create a new *de minimis* exemption if per-pager assessment is adopted because the exemption helps minimize the administrative burden placed on both the small and mid-sized paging carriers and USAC. The *de minimis* exemption prevents waste and lowers the cost of the fund administration. Accordingly, the exemption promotes the goals of Section 254 of the Act to preserve and advance universal service.

V. THE COMMISSION SHOULD DEFINE “CONNECTION” TO EXCLUDE ONE-WAY PAGING

The Commission seeks comment on defining a “connection” as a facility that provides an end user with independent access to a public network and how to define “public network” for the purpose of a connection-based assessment.²⁹ Teletouch proposes that, at a minimum, one-way paging should be excluded from the definition of a “connection.” This is because traffic flows in one direction. And while the public network is used by a caller to deliver a page, the network

²⁷ *Id.*

²⁸ *FNPRM* at para. 68.

²⁹ *FNPRM* at paras. 41, 42 respectively.

cannot be used by the paged party to respond or otherwise interact with the caller. Therefore, both parties do not receive the same beneficial use or utility of the public network as users of two-way communications. Moreover, one-way pages use the public network for only a fraction of the amount of time as two-way communications, and, as shown herein, subscribers of local paging service infrequently receive pages that originate from outside the state. Accordingly, the Commission should exclude one-way paging service from the definition, and excluded it from the USF contribution base.

Second, when the Commission originally adopted the current revenue-based universal service assessment, it specifically rejected a per-line approach because it would have to establish line-equivalency ratios which could be difficult to administer, and which would not be competitively neutral.³⁰ Now, the Commission believes that a connection-based approach may not require equivalency ratios because access to the public network should be the determining factor. Teletouch respectfully disagrees. No new evidence underpins the Commission's change in how it views the issue, and it should not act without such evidence.

VI. THE COMMISSION SHOULD NOT REQUIRE ADDITIONAL REPORTING

The Commission seeks comment on whether, should it decide to adopt a per-pager assessment, it should increase the reporting frequency for universal contributions. Under that approach, paging carriers would be required to submit a monthly report of their paging units on new FCC Form 499-M.³¹ Teletouch opposes any increase in its filing requirements. The extra burden associated with the collection and filing of 13 reports for universal contribution purposes

³⁰ See *FNPRM* at para.44 citing *Universal Service Order*, 12 FCC Rcd at 9210 para. 852.

³¹ *FNPRM* at para. 78.

increases the burden and costs on paging carriers as well as USAC. Accordingly, the increased filings would not preserve and advance universal service.

VII. CONCLUSION

The Commission should continue to use billed interstate end-user revenue data to assess universal fund contributions for the paging industry, and should therefore not adopt a \$0.25 per-pager flat-fee mechanism. Flat-fee assessments unfairly burden one-way paging carriers and their customers. A more than three-fold increase in the USF contribution per subscriber will succeed in driving more paging customers away from this low-cost communications service and add to the decline of the paging industry.

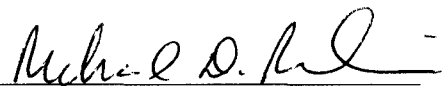
Moreover, Teletouch believes that a flat-fee would violate the Commission's statutory obligations that form the foundation of the universal service system. A flat-fee does not take into account the vast per-line revenue disparities among the different types of wireless carriers and a flat-fee would not be "equitable and nondiscriminatory" for purposes of sections 254(b)(4) and 254(d) of the Act and would involve inappropriate contribution shifting.

Teletouch has also demonstrated that the Commission should retain and lower the interim safe harbor; retain the *de minimis* exemption; define "connection" to exclude one-way paging; and should not require additional reporting requirements.

Finally, the Commission should recognize that the proposed per-connection flat-fee assessment would unduly benefit the interexchange industry by inappropriately shifting their contribution burden the fragile paging industry. While large interexchange carriers have demonstrated both a decline in their revenues in recent years and a willingness to greatly increase their toll rates (and their USF contribution factor), the documented declines in revenues

in the paging industry are no less severe; and combined with high demand elasticity, life threatening. USF reform should not be at the expense of the paging industry.

Respectfully Submitted,
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